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*Attorneys for Defendants Ripple Labs Inc.,
XRP II, LLC, and Bradley Garlinghouse*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re RIPPLE LABS INC. LITIGATION

Case No. 4:18-cv-06753-PJH

This Document Relates to:

ALL ACTIONS

**DECLARATION OF SUZANNE E. NERO
IN SUPPORT OF DEFENDANTS RIPPLE
LABS INC., XRP II, LLC, AND BRAD
GARLINGHOUSE'S NOTICE OF
MOTION AND MOTION PURSUANT TO
LOCAL RULES 6-3 AND 7-11 TO
MODIFY THE SCHEDULING ORDER**

1 I, Suzanne E. Nero, hereby declare as follows:

2 1. I am a member in good standing of the bar of the State of California, a partner with
3 the law firm King & Spalding LLP, and counsel of record for Defendants Ripple Labs Inc., XRP
4 II, LLC, and Bradley Garlinghouse (“Ripple” or “Defendants”). I have personal knowledge of the
5 facts set forth herein, and if called as a witness, could and would testify competently thereto.

6 2. Pursuant to Civil Local Rules 6-3 and 7-11 and Paragraph 3 of the Court’s Standing
7 Order in Civil Cases, I make this declaration in support of the parties’ Notice of Motion, Motion
8 to Modify the Scheduling Order as well as the accompanying Memorandum of Points and
9 Authorities and [Proposed] Order.

10 3. Ripple seeks an Order granting a six-month extension to the fact discovery and the
11 other subsequent deadlines to take advantage of the efficiencies in allowing certain overlapping
12 issues in the concurrent litigation *SEC v. Ripple Labs Inc. et al.*, 1:20-cv-10832-AT-SN (S.D.N.Y.)
13 (the “SEC Action”) to precede related issues in this case.

14 4. The key question underlying both this case and the SEC Action is whether sales of
15 XRP constitute an investment contract pursuant to *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301
16 (1946). That key question is currently awaiting ruling by Judge Torres on summary judgment
17 motions that are fully briefed since November 2022.

18 5. Discovery related to this key question will be similar in both cases. Lead Plaintiff
19 has recently requested to use the transcripts from the SEC Action but indicated his intent to also
20 depose the same individuals, including on the same topics of which they already gave prior
21 testimony.

22 6. As such, granting an extension to the deadlines in this case will be far more efficient
23 for the parties and the Court, minimize or eliminate the need for extensive discovery into issues
24 that will be decided in the pending SEC Action, and reduce the risk of conflicting rulings on the
25 central issue in both litigations.

26 7. This Court issued its first Case Management and Pretrial Order before the SEC
27

1 Action was filed. ECF No. 124 & ECF No. 125.

2 8. On February 23, 2022, the parties stipulated to extend the pretrial schedule. ECF
3 No. 157.

4 9. Since that time, Ripple has diligently complied with Lead Plaintiff's discovery
5 requests. Much of the discovery that Lead Plaintiff requested consisted of the discovery in the
6 SEC Action. Lead Plaintiff has sought all documents produced by any party or third-party in the
7 SEC Action, discovery requests and responses, expert reports, deposition transcripts which
8 Defendants produced (in accordance with the appropriate confidentiality provisions in both this
9 action and the SEC Action). Defendants have produced over 650,000 documents to Lead Plaintiff
10 to date.

11 10. Lead Plaintiff has indicated his intent to depose eight current or former Ripple
12 employees in the first three months of the year, and Lead Plaintiff served five third-party subpoenas
13 for depositions and documents. Ripple expects this discovery will be largely duplicative of
14 discovery already taken in both the SEC investigation and SEC Action—indeed, seven of the eight
15 individuals gave deposition testimony in the SEC Action and four also gave testimony in the SEC
16 investigation. Lead Plaintiff recently requested to use the transcripts from the SEC Action but
17 concurrently wants to depose many of the same individuals, including on the same topics of which
18 they already gave prior testimony.

19 11. Ripple itself has also timely served written discovery and sought the deposition of
20 Lead Plaintiff and other witnesses relevant to class certification. Ripple has diligently pursued
21 discovery, complied with the pretrial schedule, and has not sought to delay progress in this action.

22 12. On or around Thursday, December 15, my colleague Andrew Michaelson had a
23 phone conversation with counsel for Lead Plaintiff Steven Sklaver regarding Ripple's request to
24 extend the close of fact discovery and subsequent pretrial dates.

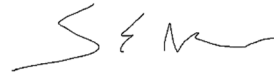
25 13. On December 20, Lead Plaintiff's counsel Steven Sklaver informed me by email
26 that Lead Plaintiff would not agree to an extension of the current deadlines. I informed him on
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1 that same date that Ripple intended to file this motion and would note Lead Plaintiff's opposition
2 to that motion.

3 14. There have been two prior modifications to the Scheduling Order. First, by
4 agreement of the parties in February 2022. ECF No. 157 & ECF No. 158. And recently, a small
5 one-week extension to the class certification opposition and reply briefing deadlines in order to
6 accommodate a scheduling conflict for Lead Plaintiff's damages expert. ECF No. 185.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Executed this 22nd day of December, 2022, at Oakland, California.

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13 Suzanne E. Nero
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